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AUTHORITIES CITED.

MISCELLANEOUS.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1925

No. 301

SAMUEL W. LAMBERT, *Appellant*,

vs.

EDWARD C. YELLOWLEY, AS ACTING FEDERAL PROHIBITION DIRECTOR; DAVID H. BLAIR, AS COMMISSIONER OF INTERNAL REVENUE, AND EMERY R. BUCKNER, AS UNITED STATES ATTORNEY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF AMICI CURIAE

On Behalf of Respondents

Agreeable to the permission of the court this brief is filed as Amici Curiae in the hope that some of the reasons and authorities cited may prove helpful in the consideration of the question of law involved. The case involves the power of Congress to regulate the

prescribing of intoxicating liquors under the Eighteenth Amendment and incidentally the power of the states in the same respect under the concurrent power clause of the Eighteenth Amendment.

STATEMENT OF FACTS

This is an appeal from the judgment of the U. S. Circuit Court of Appeals of the Second Circuit reversing the judgment and directing the dismissal of an injunction issued by the District Court for the Southern District of New York upon a bill filed by the petitioner, a licensed practicing physician of New York, seeking to enjoin the Commissioner of Internal Revenue and the U. S. District Attorney from enforcing against him the limitations upon the quantity of intoxicating liquor which he as a physician might prescribe, imposed by the National Prohibition Act and Supplemental Prohibition Act, upon the grounds that said statutes are unconstitutional.

QUESTION OF LAW INVOLVED

The Constitutional power of Congress under the Eighteenth Amendment to enact the provisions of the National Prohibition Act, Section 7, Title II, limiting the quantity of spirituous liquor which a physician may prescribe for internal use by the same person to one pint within ten days and the similar limitation with reference to vinous liquor, in Section 2 of the Supplemental Prohibition Act of November 23rd, 1921, that: "No physician shall prescribe * * * on any prescription, any vinous liquor that contains more than 24 per centum of alcohol by volume, nor shall anyone prescribe * * * on any prescription more than one-fourth of one gallon of vinous liquor, or any such

vinous or spirituous liquor that contains separately or in the aggregate more than one-half pint of alcohol, for use by any person within any period of ten days."

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighteenth Amendment to United States Constitution (Appendix, p, 35).

Sec. 7, Title II, of National Prohibition Act, October 28, 1919 (41 Stat. L. 305) Appendix, p. 35.

Sec. 2. Supplemental Prohibition Act, November 23, 1921 (42 Stat. L. 222) Appendix, p. 36.

ARGUMENT

THE POWER OF CONGRESS UNDER THE EIGHTEENTH AMENDMENT TO PROHIBIT THE PRESCRIBING OF CERTAIN KINDS OF INTOXICATING LIQUORS AND TO REGULATE THE PRESCRIBING OF OTHER KINDS CONCLUSIVELY SETTLED BY THE DECISIONS OF THIS COURT.

This Court in Everard's Breweries v. Day, 265 U. S. 545, in a unanimous opinion sustained the constitutionality of the Supplemental Prohibition Act prohibiting, absolutely, the prescribing of intoxicating malt liquors for medicinal purposes. In this case this Court laid down the following principles regarding the power of Congress to enact appropriate legislation to enforce the Eighteenth Amendment, saying:

> "By its terms the Amendment prohibits the manufacture, sale, or transportation of intoxicating liquors for beverage purposes, and grants to

> Congress the power to enforce this prohibition 'by appropriate legislation.' Its purpose is to suppress the entire traffic in intoxicating liquor as a beverage. See Grogan v. Walker, 259 U. S. 88-89. And it must be respected and given effect in the same manner as other provisions of the Constitution. National Prohibition Cases, 253 U. S. 350-386.

It is clear that Congress has the undoubted right and power of suppress every phase of the beverage liquor traffic, and to that end it may enact appropriate legislation to accomplish that purpose. The court further held:

> "Congress is not limited to such measures as are indispensably necessary to give effect to its express powers, but, in the exercise of its discretion as to the means of carrying them into execution, may adopt any means, appearing to it most eligible and appropriate, which are adapted to the end to be accomplished, and consistent with the letter and spirit of the Constitution."

In the above statement and the long list of citations given, it is established beyond a doubt that Congress is given the largest possible latitude in the exercise of its discretion for making the Eighteenth Amendment effective and enforceable. That Congress did not go beyond any reasonable limit in regulating the prescribing of spirituous and vinous liquors is shown by the laws of the various states dealing with this subject. In fact, the act of Congress is not as strict or drastic in many of its provisions as the state laws. This court further said in that case, p. 559:

> "It is likewise well settled that where the means adopted by Congress are not prohibited and are

calculated to effect the object intrusted to it, this Court may not inquire into the degree of their necessity, as this would be to pass the line which circumscribes the judicial department, and to tread upon legislative ground."

The means adopted by Congress for regulating the prescribing of spirituous and vinous liquors are not only not prohibited but they are clearly calculated to effect the object entrusted to it. If Congress did not have the power to deal with beverage whisky used for medicinal purposes the whole purpose of prohibition could be thwarted by the practice of unscrupulous physicians in communities prescribing intoxicating liquors which could be used for beverage purposes. This Court in the Everards case (supra) said, p. 560:

> "It is clear that Congress, under its express power to enforce by appropriate legislation the prohibition of traffic in intoxicating liquors for beverage purposes, may adopt any eligible and appropriate means to make that prohibition effective. The possible abuse of a power is not an argument against its existence."

This recent decision of the Court, like the decision in the Webb-Kenyon Interstate Liquor shipment case, James Clark Distilling Co., v. Western Maryland R. Co., 242 U. S. 311-332, makes clear that a possible abuse of a power is not an argument against its existence. Chief Justice White well said in that case:

> "The fact that regulations of liquor have been upheld in numberless instances which would have been repugnant to the great guarantees of the Constitution but for the enlarged right possessed by government to regulate liquor has never, that

we are aware of, been taken as affording the basis for the thought that government might exert an enlarged power as to subjects to which, under the constitutional guaranties, such enlarged power could not be applied. In other words, the exceptional nature of the subject here regulated is the basis upon which the exceptional power exerted must rest, and affords no ground for any fear that such power may be constitutionally extended to things which it may not, consistently with the guaranties of the Constitution, embrace."

There is no abuse of this power in the instant case. The steady growth of the number of permits and the large amount of whisky prescribed for beverage use in the small section of this country since the National Prohibition Act went into effect indicates clearly what would appear if this barrier were removed.

MORE RESTRICTIVE LIMITATIONS UPON PRESCRIBING OF LIQUOR HAVE BEEN HELD CONSTITUTIONAL BY UNITED STATES SUPREME COURT UNDER EIGHTEENTH AMENDMENT.

The question which is raised in this case has already been decided by the United States Supreme Court adversely to the contention of the petitioner. The specific question of the authority of legislative bodies under the Eighteenth Amendment to impose limitations upon the prescribing of liquors for medicinal purposes was considered by the Supreme Court of the United States in the case of Hixson vs. Oakes, decided May 26, 1924, 265 U. S. 254. This case involved the validity of the Gandier ordinance of Los Angeles, California.

This ordinance, enacted prior to the adoption of the

Eighteenth Amendment, provided that pharmacists might fill prescriptions for alcoholic liquors in a quantity not exceeding one-half pint upon a single prescription. No limitation was fixed concerning the frequency of issuance. The National Prohibition Act, Title II, Section 7, and Supplemental Prohibition Act of Nov. 23, 1921, section 2, provide that not more than one pint of spirituous or vinous liquors may be prescribed for the same patient within a period of ten days. *It was contended that the ordinance, when read in connection with the provisions of the National Prohibition Act, in effect limited the filling of prescriptions for the same patient to 8 oz. (½ pint) of spirituous or vinous liquors within ten days—whereas the Federal law permitted 1 pint of such liquors within this period.* It was alleged that the ordinance was unconstitutional because in conflict with the Eighteenth and Fourteenth Amendments. The District Court of Appeals, Second District, Division 2, California, in Ex Parte Hixson, 214, p. 677, upheld the validity of the ordinance, saying:

> "* * * It is claimed that the practical effect of the combined operation of the national act and the city ordinance is to make it unlawful for a licensed pharmacist in the city of Los Angeles to sell to any one person, on a physician's prescription, more than eight ounces of alcoholic liquor in any period of ten days which amount, it is claimed, is so small as to be valueless for medicinal purposes. Assuming, without conceding, that such is the result of the operation of the city ordinance and the national law, *we still do not think that the ordinance has been rendered unreasonable.*" (italics ours.)

"If wine, whiskey, brandy, and the like are useful for medicinal and other non-beverage purposes, still the evils which flow from their use as a beverage so greatly menance the health, peace, morals, and safety of society that the lawmaking branch of the government may with reason regard those evils as overwhelmingly outweighing the good services which such liquors may perform as medicines. If experience shows that the sale of intoxicating liquors for medicinal purposes opens the door to that train of evils which admittedly follows upon their general use as beverages, then why may not their use as medicines be absolutely prohibited? That the sale of such liquors for medicinal purposes does greatly facilitate the evasion of the whole scheme of prohibitory legislation is a matter of common notoriety. A city's entire scheme of prohibition might fail if pharmacists were to be permitted to sell alcholic liquors for medicinal use. And because this is so, the city of Los Angeles, had it deemed wise and expedient, could have forbidden the sale of such liquors as medicines, even though such sales, regarded as separate transactions, might be entirely innocuous.

"The fallacy of petitioner's position lies in the assumption that, if an article is useful for any purpose, its sale cannot be wholly forbidden. But, notwithstanding an article may be useful for some purposes, its harmfulness to the public from its general use, may be so great and widespread and its secret disposition may be so difficult to prevent, that the legislature, to protect the public, may absolutely forbid the manufacture or sale, or both, so as effectively to root out its evil effects altogether." (See also cases cited therein.)

The case was brought on writ of certiorari to the United States Supreme Court. Mr. Justice McReynolds, in speaking for this court, declared:

"Neither the Eighteenth Amendment nor the Volstead Act, grants the right to sell intoxicating liquors, within a state, and certainly nothing in that Act lends color to the suggestion that it endows a pharmacist with the right to dispense liquors for which he may claim the protection of the Fourteenth Amendment." (italics ours.)

The California Court, in this case, was careful to point out that its decision was predicated upon the proposition that, notwithstanding the law recognized liquor as a medicine and the effect of the ordinance and the Volstead Act was to limit the quantity of liquor which could be obtained upon prescription for medicinal purposes to one-half pint within ten days. It did not violate any constitutional right.

The effect of this ordinance as construed by the California Court was to recognize spirituous liquor as a medicine but to impose limitations even more restrictive than those provided in the Volstead Act. The action of the California Court in sustaining this legislation as valid under the Eighteenth Amendment was upheld by this Court in denying the writ of habeas corpus on the grounds that no Federal constitutional right was violated. The reasoning of this Court in the Hixson case is controlling in the instant case. The fact that the Hixson case involved a municipal ordinance, while the instant case involves a Federal act to enforce the Eighteenth Amendment, in no way alters the result.

POWER OF CONGRESS TO ENFORCE EIGHTEENTH AMENDMENT IS THE SAME AS THE POLICE POWER OF STATES TO PROHIBIT BEVERAGE INTOXICANTS.

It is now well settled by the decisions of the United States Supreme Court that the power of Congress to effectively prohibit the manufacture and sale of beverage liquors under the Eighteenth Amendment is as full and complete as the police power of the state to enforce such prohibition.

The character and extent of the power conferred upon Congress by the Eighteenth Amendment was the precise issue before the Supreme Court in the National Prohibition Cases, 253 U. S. 350.

The Eighteenth Amendment prohibits the manufacture and sale of intoxicating liquors. Congress in the National Prohibition Act had defined that term to include beverages containing as much as one-half of one per cent of alcohol by volume. It was insisted that the statute prohibited the manufacture and sale of beverages which were not in fact intoxicating and that because of this the statute was unconstitutional. The Court held:

> "Congress did not exceed its powers, under U. S. Const., 18th Amend., to enforce the prohibition therein declared against the manufacture, sale, or transportation of intoxicating liquors for beverage purposes, by enacting the provisions of the Volstead Act of October 28, 1919, wherein liquor containing as much as one-half of one per cent of alcohol by volume, and fit for use for beverage purposes, are treated as within that power."

It was also insisted that Congress had exceeded the authority conferred by the Amendment by making the prohibition apply to liquors manufactured prior to

the date upon which the Amendment became effective. This Court said:

> "The power of Congress to enforce the Prohibition Amendment to the Federal Constitution may be exerted against the disposal for beverage purposes of liquors manufactured before the Amendment became effective, just as it may be against subsequent manufacture for those purposes."

Even prior to the granting of an express Constitutional power over the subject of intoxicating liquors when Congress legislated upon the subject as an incident of some other constitutional power, full authority was possessed to make the prohibition effective, and the fact that such legislation had the character of a police regulation was no objection to its validity. In the case of Ruppert v. Caffey, 251 U. S. 264, 300, the Supreme Court held:

> "The implied war power (of Congress) over intoxicating liquors extends to the enactment of laws which will not merely prohibit the sale of intoxicating liquors, but will effectively prevent their sale. When the United States exerts any of the power conferred upon it by the Constitution, no valid objection can be based upon the fact that such exercise may be attended by the same incidents which attend the exercise by a State of its police power."

Any attempted distinction between the character of the power possessed by the States over the subject of intoxicating liquor in the exercise of the police power and the nature of the power possessed by Congress under the Eighteenth Amendment is fundamentally unsound.

In Ruppert v. Caffey, 251 U. S. 264, 299, this principle is clearly and succinctly stated:

> "The police power of a State over the liquor traffic is not limited to the power to prohibit the sale of intoxicating liquors, supported by a separate implied power to prohibit kindred non-intoxicating liquors so far as necessary to make the prohibition of intoxicants effective; it is a single broad power to make such laws, by way of prohibition, as may be required to effectively suppress the traffic in intoxicating liquors."

THE AUTHORITY OF THE STATES TO PROHIBIT CERTAIN KINDS OF LIQUORS FOR MEDICINAL PURPOSES AND TO REGULATE THE MEDICINAL USE OF OTHER KINDS WELL ESTABLISHED.

Even where a Constitutional Amendment prohibits the sale of intoxicating liquors except for medical, scientific, and mechanical purposes the courts hold that the exceptions made cannot be construed to prevent the adequate enforcement of the prohibition against the use of such liquors for beverage purposes. This precise question was raised in the case of State v. Durein, 70 Kansas, 13, 80, Pac. 986, 15 L. R. A. (N. S.) 908, 905.

In a unanimous opinion of the court delivered by Judge Burch the authorities are reviewed and the following language is used:

> "The amendment to the Constitution of this State already quoted does not limit or abridge the power of the legislature further to prohibit the traffic in intoxicating liquor. It restrains the legislature in its power to tolerate only, and not in

> its power to suppress. * * * Therefore the status of the manufacture and sale of such liquors for medicinal, scientific, and mechanical purposes was in no manner fortified by the constitutional amendment, but it was left to be dealt with by the legislature as necessity might require, having particular regard to the complete suppression of manufacture and sale for beverage purposes."

This decision was later affirmed by the Supreme Court of the United States, January 13, 1908, 208 U. S. 613, 52 L. Ed., 645, 28 Su. Ct. Rep. 567.

In the later case of State v. Weiss, 84 Kans. 165, 113 Pac. 388, 36 L. R. A. (N. S.) 73, the court held:

> "The constitutional amendment forever prohibiting the manufacture and sale of intoxicating liquors in this State, except for medical, scientific, and mechanical purposes, is not a restriction upon the power of the legislature to prohibit by statute. In the absence of such amendment, the legislature would possess such power, and its authority is not diminished thereby."

Section 1 of the original prohibition law of Kansas permitted the sale of liquor for medicinal purposes.

In 1909 the legislature amended this section of the statute by striking out the provision that liquors might be sold for medicinal purposes. This was sustained in the case of State v. Miller, 92 Kan. 994; 142 Pac. 979.

In 1917 the Legislature of Kansas enacted the Bone Dry Law which prohibits the sale of anything save alcohol for medicinal purposes. Such sales are limited to druggists, hospitals and institutions authorized to receive. No provision is made for dispensing upon prescription. The validity of this act was upheld in the Case of State v. Mack, 104 Kan. 742, 180, P. 985.

This decision was also followed by the subsequent case of State v. Kurent, 105 Kan. 13, 181 P. 603, where the constitutionality of the statute was reaffirmed. It must be borne in mind that this is the status of law in a State where the State constitutional provision reads:

> "The manufacture and sale of intoxicating liquor shall be forever prohibited in this State, except for medicinal, scientific and mechanical purposes."

In 1886 Rhode Island adopted an amendment to the constitution of the State which in its wording was very similar to the language of the Eighteenth Amendment to the Constitution of the United States. In the case of State v. Kane, 15 R. I. 395, 6 Atl. 783, the question of the relation of the amendment to non-beverage liquor was before the Supreme Court of that State. It was held:

> "The fifth amendment to the constitution of Rhode Island provides: 'The manufacture and sale of intoxicating liquors, to be used as a beverage, shall be prohibited. The general assembly shall provide by law for carrying this article into effect. Held, this does not limit the power the general assembly previously had to pass a prohibitory law. Held, also, this does not impliedly license the manufacture and sale of intoxicating liquors for other purposes than as a beverage.' "

The Supreme Court of Rhode Island reaffirmed this view in the case of State v. Kennedy, 16 R. I. 409, 17 Atl. 51, wherein it was said:

"In State v. Kane, 15 R. I. 395, 6 Atl. Rep. 783, we carefully considered the point here raised, and expressed the opinion that while the fifth amendment to the constitution, commonly called the 'Prohibitory Amendment,' makes it obligatory on the general assembly to enact laws to prevent the sale of intoxicating liquors 'to be used as a beverage,' it does not take away from the general assembly, either expressly or by implication, the power which it previously had to restrict the sale, for other purposes, to certain persons or classes of persons; BUT RATHER ON THE CONTRARY, MAKES IT THEIR DUTY TO IMPOSE SUCH A RESTRICTION, IF, BY SO DOING, THEY CAN THE MORE EFFECTUALLY PREVENT THE SELLING AND KEEPING FOR SALE FOR USE AS A BEVERAGE. WE REMAIN OF THE OPINION THERE EXPRESSED, EXCEPTIONS OVERRULED." (CAPITALS OURS.)

In the case of Re. Crane, 27 Idaho 671, 151 P. 1006, L. R. A. 1918 A 942, the Supreme Court of Idaho in construing the law of that State, Session Laws 1915, Chapter 11, said:

"The only means provided by the act for procuring intoxicating liquors in a prohibition district for any purpose relates to wine to be used for sacramental purposes and PURE ALCOHOL TO BE USED FOR SCIENTIFIC OR MECHANICAL PURPOSES, OR FOR COMPOUNDING OR PREPARING MEDICINES, SO THAT THE POSSESSION OF WHISKEY OR OF ANY INTOXICATING LIQUOR, OTHER THAN WINE AND PURE ALCOHOL FOR THE USES ABOVE MENTIONED, IS PROHIBITED." (CAPITALS OURS.)

The Supreme Court of the United States, Dec. 10,

1917, sustained the validity of the statute, Crane v. Campbell, 245 U. S. 304, 62 L. Ed. 304, 38 Su. Ct. 98.

The CONSTITUTION OF ONE State, that of ARIZONA, as construed by the Supreme Court of that State prohibits the prescribing of alcohol or any form of intoxicating liquors. See Cooper v. State, 172 Pac. 276.

The legislative power to impose limitations and regulations upon the prescribing of medicinal liquor is also settled. Section 2, Article 16, of the Constitution of Michigan, reads:

> "The manufacture, sale, keeping for sale, giving away, bartering or furnishing of any vinous, malt, brewed, fermented, spirituous or intoxicating liquors except for medicinal, mechanical, chemical, scientific or sacramental purposes shall be after April thirty, nineteen hundred and eighteen, prohibited in the state forever. The Legislature shall by law provide regulations for the sale of such liquors for medicinal, mechanical, chemical, scientific and sacramental purposes."

The legislature by the Act of 1919 No. 53 limited the quantity of intoxicating liquor which a physician could prescribe to not to exceed eight ounces upon a single prescription. In People v. Urcavitch, 178 N. W. 225, the Supreme Court of Michigan said in answer to the alleged unconstitutionality of the Act:

> "We are of the opinion that these provisions open the way to one who is in need of intoxicating liquors for medicinal purposes to obtain the same. Of course, it may be said that the acquisition of it is preceded by much 'red tape,' but, as the Legislature has made it possible to secure it, the mere fact that it is hedged about with many safeguards would not result in making the law unconstitutional."

THIS COURT HAS REPEATEDLY UPHELD THE RIGHT OF CONGRESS TO REGULATE THE NON-BEVERAGE USE OF LIQUOR AS AN IMPLIED AND NECESSARY INCIDENT TO MAKE EFFECTIVE THE PROHIBITION UPON THE BEVERAGE USE OF INTOXICANTS.

In Selzman v. United States, 268 U. S. 466, this Court in upholding the right of Congress to regulate the distribution of denatured alcohol, although unfit for beverage use, said in answer to the contention that no such power was conferred by the Eighteenth Amendment empowering Congress to prohibit the beverage use of intoxicating liquors:

> "The power of the Federal government, granted by the 18th Amendment, to enforce the prohibition of the manufacture, sale, and transportation of intoxicating liquor, carries with it power to enact any legislative measures reasonably adapted to promote the purpose. The denaturing in order to render the making and sale of industrial alcohol compatible with the enforcement of prohibiton of alcohol for beverage purposes is not always effective. The ignorance of some, the craving and the hardihood of others, and the fraud and cupidity of still others, often tend to defeat its object. It helps the main purpose of the Amendment, therefore, to hedge about the making and disposition of the denatured article every reasonable precaution and penalty to prevent the proper industrial use of it from being perverted to drinking it. The conclusion is fully supported by the decisions of this court in Jacob Ruppert v. Caffey, 251 U. S. 264, 282, 64 L. Ed. 260, 266, 40 Supt. Ct. Rep. 141, and National Prohibition Cases (Rhode Island v. Palmer), 253 U. S. 350, No. 11, 64 L. ed. 946, 978, 40 Sup. Ct. Rep. 486, 588. See also Huth v. United States, 295 Fed. 35, 38."

FIFTH AMENDMENT IMPOSES NO GREATER LIMITATION UPON CONGRESS THAN FOURTEENTH AMENDMENT DOES UPON THE STATES.

In Hamilton vs. Kentucky Distilleries & Warehouse Company, 251 U. S. 146, 156-64 Ed. 194-199, Mr. Justice Brandeis said:

> "But the Fifth Amendment imposes in this respect no greater limitation upon the national power than does the Fourteenth Amendment upon state power. (Re. Kemler, 136 U. S. 436, 448, 34 L. Ed. 519-524, 10 Su. Ct. Rep. 930; Carroll v. Greenwich Ins. Co., 199 U. S. 401, 410, 50 L. Ed. 246, 250, 26 Su. Ct. Rep. 66. If the nature and conditions of a restriction upon the use or disposition of property are such that a State could, under the police power, impose it consistently with the Fourteenth Amendment, without making compensation then the United States may for a permitted purpose impose a like restriction consistently with the Fifth Amendment without making compensation; for prohibition of the liquor traffic is conceded to be an appropriate means of increasing our war efficiency."

THERE IS NO RIGHT TO PRACTICE MEDICINE WHICH IS NOT SUBORDINATE TO POLICE POWER.

This is well settled by the decisions of the United States Supreme Court. In Dent v. West Virginia, 129 U. S. 114, 32 L. Ed. 623, 626, 9 Su. Ct. Rep. 231, Mr. Justice Field said in speaking of the validity of the West Virginia statute providing a license and fixing the conditions upon which physicians might practice:

"* * * But there is no arbitrary deprivation of such right where its exercise is not permitted because of a failure to comply with conditions imposed by the State for the protection of society. * * * The nature and extent of the qualifications required must depend primarily upon the judgment of the State as to their necessity. * * * The same reasons which control in imposing conditions, upon compliance with which the physician is allowed to practice in the first instance, may call for further conditions as new modes of treating disease are discovered, or a more thorough acquaintance is obtained of the remedial properties of vegetable and mineral substances, or a more accurate knowledge is acquired of the human system and of the agencies by which it is affected."

In Gray v. State of Connecticut, 159 U. S. 74, 40 L. Ed. 80, Mr. Justice Field in speaking for the Supreme Court in sustaining the validity of a liquor law which imposed additional qualifications upon a pharmacist already holding a license to practice pharmacy, said:

"A license to pursue any business or occupation, from the governing authority of any municipality or State, can only be invoked for the protection of one in the pursuit of such business or occupation, so long as the same continues unaffected by existing or new conditions. The degree of care and scrutiny which should attend the pursuit of the business or occupation practiced will necessarily depend upon the safety and freedom from injurious or dangerous conditions attending the prosecution of the same.

"In the preparation of medicinal compounds, intoxicating liquors and even still more dangerous ingredients are often properly used; but the protecting care of the government, municipal or State, in their use, should never be relaxed be-

yond the bounds of absolute safety. The responsibility of the legal authority, muncipal or State, cannot be stipulated or bartered away. Whatever provisions were prescribed by the law previous to 1890 in the use of spirituous liquors in the medicinal preparations of pharmacists, they did not prevent the subsequent exaction of further conditions which the lawful authority might deem necessary or useful.

"For reasons which were deemed sufficient after 1890 by the authorities of Connecticut, the use of spirituous liquors in the preparation of pharmacists' compounds required still further provisions than those previously existing, and it was provided that such liquors could not be subsequently used in their preparation without the pharmacist first procuring a druggist's license from the county commissioners.

"The imposition by the court of a fine upon the accused for a disregard of this requirement trespassed in no way upon any of his rights under the Constitution of the State or the 14th Amendment of the Federal Constitution."

In Watson v. Maryland, 218 U. S. 172, 54 L. Ed. 987, Mr. Justice Day said in sustaining the statute of Maryland relating to the practice of medicine:

"* * * The details of such legislation rest primarily within the discretion of the State legislature. It is the law-making body and the Federal courts can only interfere when fundamental rights guaranteed by the Federal Constitution are violated in the enactment of such statutes."

See also Reetz v. Michigan, 188 U. S. 505, 47 L. Ed. 563; Williams v. Arkansas, 217 U. S. 79, 54 L. Ed. 673; O'Neil v. State, 115 Tenn. 427, 90 S. W. 627, 3 L. R. A. (N. S.) 762; State v. Davis, 194 Mo. 485, 92 S. W. 484,

4 L. R. A. N. S. 1023; State v. Rosenkrans, 30 R. I. 374, 75 Atl. 491, affirmed 56 L. Ed. 1263; State v. Edmunds, 127 Iowa 333, 101 N. W. 431.

THE EIGHTEENTH AMENDMENT CONFERRED NO NEW RIGHT TO MANUFACTURE OR PRESORIBE INTOXICATING LIQUORS.

This question was conclusively settled by this Court in Hixson v. Oakes, 265 U. S. 254, 64 L. Ed. 1005.

THE POWER TO PROHIBIT THE MANUFACTURE OR PRESCRIBING OF LIQUOR ABSOLUTELY BEING ESTABLISHED IT NECESSARILY INCLUDES THE LESSER POWER TO PERMIT CONDITIONALLY.

This was the precise issue before the United States Supreme Court in the case of Clark Distilling Company v. Western Maryland R. Co., 242 U. S. 311, 61 L. Ed. 326. The facts in that case were that Congress, in the exercise of its power to regulate commerce among the States had enacted the Webb-Kenyon Law which provides:

> "* * * That the shipment or transportation, in any manner or by any means whatsoever, of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, from one State, territory, or district of the United States, * * * into any other State, Territory, or district of the United States, * * * which said spirituous, vinous, malted, fermented, or other intoxicating liquor is intended, by any person interested therein, to be received, possessed, sold, or in any manner used, either in the original package or other-

> wise, in violation of any law of such State, territory, or district of the United States * * * is hereby prohibited."

It was insisted in that case, that while Congress had the power to prohibit the facilities of interstate commerce absolutely to the transportation of intoxicating liquor, nevertheless, it had exceeded its powers by prohibiting conditionally, or by leaving the determination of whether such prohibition should apply, to the States. Mr. Chief Justice White said there was absolutely no doubt about the power of Congress to prohibit the transportation absolutely under its constitutional authority to regulate commerce. Upon this subject he said:

> "It is not in the slightest degree disputed that if Congress had prohibited the shipment of all intoxicants in the channels of interstate commerce, and therefore had prevented all movement between the several States, such action would have been lawful, because within the power to regulate which the Constitution conferred. Lottery Case (Champion v. Ames), 188 U. S. 321, 13 Am. Crim. Rep. 561; Hoke v. United States, 227 U. S. 308, 57 L. Ed. 523, 43 L. R. A. (N. S.) 906, 33 Sup. Ct. Rep. 281, Ann. Cas. 1913-E, 905."

In refuting the contention that the law was unconstitutional because Congress had not prohibited absolutely but merely conditionally, the Chief Justice said:

> "We can see no reason for saying that although Congress, in view of the nature and character of intoxicants, had a power to forbid their movement in interstate commerce, it had not the authority to so deal with the subject as to establish a regu-

lation (which is what was done by the Webb-Kenyon Law) making it impossible for one State to violate the prohibitions of the laws of another through the channels of interstate commerce. Indeed, we can see no escape from the conclusion that if we accepted the proposition urged, we would be obliged to announce the contradiction in terms that because Congress had exerted a regulation lesser in power than it was authorized to exert, therefore its action was void for excess of power."

Ohio ex rel. Lloyd v. Dollison, 194 U. S. 445, 48 L. Ed. 1062, 24 Sup. Ct. Rep. 703; Rippey v. Texas, 193 U. S. 504, 48 L. Ed. 767, 24 Sup. Ct. Rep. 516; Southern Exp. Co. v. State, 188 Ala. 454, 66 So. 122; American Exp. Co. v. Beer, 107 Miss. 528, 65 So. 581, Ann. Cas. 1916 D. 127; State v. United States Exp. Co., 164 Ia. 112, 145 N. W. 451; State v. Doe, 92 Kan. 212, 139 Pac. 1170.

Every form of regulation implies a partial prohibition. The decisions of the State courts sustained by the United States Supreme Court clearly establish the right of a legislative body to prohibit absolutely the medicinal use of liquor in order to prevent the evils of the beverage use. The State statutes to this effect have been uniformly upheld. The power of Congress under the Eighteenth Amendment to make effective the prohibition upon the beverage use is no less than that of a State in the exercise of its police power. Merely because Congress has not seen fit to exert that power by laying an entire prohibition upon the prescribing of spirituous or vinous liquors for medicinal use but has seen fit to impose limitations not amounting to a complete prohibition constitute no valid constitutional objection to the provisions of the statute.

The characteristics of intoxicating liquor are such that it lends itself peculiarly to evasion of the law. It was both reasonable and necessary, if its sale was to be permitted for medicinal use, that regulations and conditions upon such use be imposed. The experience in the States demonstrated this. Because of this fact in nearly every state adopting prohibition prior to national prohibition the prescribing of liquor has been either prohibited altogether or limited to pure alcohol only.

EVIDENCE BEFORE CONGRESS SHOWED NECESSITY OF LIMITATIONS OF NATIONAL PROHIBITION ACT.

Congress is charged by the Eighteenth Amendment with the duty of enacting appropriate legislation for its enforcement. In legislating for the entire nation Congress adopted a much more liberal policy with reference to the prescribing of intoxicating liquors for medicinal purposes than obtained in a majority of the states which had adopted state prohibition prior to the ratification of the Eighteenth Amendment.

Experience in these states had shown the necessity for strictly regulating the use of intoxicating liquors for medicinal purposes if the prohibition upon the beverage use was to be made effective. Thus in twelve states, Arizona, Idaho, Maine, New Mexico, North Dakota, Georgia, Kansas, Nebraska, North Carolina, Utah, Washington and West Virginia *no intoxicating liquor of any kind may be prescribed,* while in ten states, Alabama, Arkansas, Delaware, Florida, Indiana, Mississippi, Oklahoma, Oregon, South Carolina, Tennesese and the territory of Alaska pure alcohol only may be prescribed. All of the above with the ex-

ception of Delaware having adopted prohibition prior to National Constitutional prohibition. In one state, North Dakota, a physician may not prescribe any intoxicating liquor but may personally administer not exceeding one pint to an individual patient within a period of ten days. Taking these groups together there is a total of twenty-three states and one territory where whisky, brandy, wine, etc., may not be prescribed because of local law.

In the foregoing states and territory the legislation has taken the form of an absolute prohibition of the prescribing of beverage liquors for medicinal purposes. Of the remaining twenty-six states in which intoxicating liquor may be prescribed, twenty of them have adopted some form of legislation regulating the issuance of prescriptions. Of this number fifteen have either the same limitation in the state law as the Federal law, or have, in effect adopted the limitations of the Federal law limiting the quantity of intoxicating liquor which may be prescribed to one pint for the same patient within a period of ten days. These states are California, Connecticut, Illinois, Iowa, Kentucky, Minnesota, Missouri, Montana, New Hampshire, New Jersey, Rhode Island, Vermont, Virginia, Wisconsin and Wyoming.

In three states the quantity of liquor which may be prescribed upon a single prescription is less than that permitted under the Federal law. In Colorado the quantity is limited to four ounces, in Michigan it is limited to eight ounces. There is no limitation upon the frequency of issuance, however. In Ohio the quantity is limited to one-half pint of pure grain alcohol or spiritous liquor within ten days.

One state, South Dakota, requires the physician to obtain a state permit, keep records, etc., but does not

fix the quantity that may be prescribed. Three states, Pennsylvania, Louisiana and Massachusetts, having enacted a state code for the enforcement of the Eighteenth Amendment, have no provisions regulating prescriptions, while three states, Maryland, Nevada and New York, have no state prohibitory laws, Maryland never having enacted any. In Nevada the statute attempting to adopt the National Prohibition Act by reference, was held unconstitutional by the Supreme Court. In New York the state law which contained the same limitations as the Federal law regarding prescriptions for liquor was repealed by the Legislature.

The necessity for limitations upon the authority of physicians to prescribe was the precise question which confronted Congress at the time the Supplemental Prohibition Act of November 23, 1921, was passed. The original Volstead act, Section 7, provided that "not more than a pint of spirituous liquor to be taken internally shall be prescribed for use by the same person within any period of ten days and no prescription shall be filled more than once."

In October, 1921, the Attorney General ruled that malt liquors and vinous liquors could be prescribed without any limitation save such as was imposed by the professional judgment of the physician (32 Opp. Attorney Genl 467). This would have permitted the prescribing of malt and vinous liquors without any restriction as to quantity or frequency. The Supplemental Prohibition Act was promptly passed by Congress to meet this situation and to provide limitations in the law, to safeguard against abuses. This act prohibited absolutely the prescribing of malt liquors and extended the same limitations with reference to the prescribing of vinous liquors that had obtained in the original Act with reference to spiritous liquors. The

constitutionality of this Act was sustained in Everard's Breweries vs. Day (Supra).

Congress by this situation was called upon to consider the necessity for limitations upon the prescribing of liquors for medicinal purposes. It was in evidence that, in twenty-four states, no physician could prescribe intoxicating liquors for medicinal purposes and that, out of a total of 152,627 physicians in the country at the time, seventy-eight per cent had not taken out permits to prescribe (See hearings before the Committee on the Judiciary, House of Representatives, 67th Congress, Serial 2 on H. R. 5033, pages 15 and 16). For evidence upon the necessity of limitations in the laws, see page 19, last paragraph. Also statement of Former Prohibition Commissioner Kramer, page 146, also debates in 67th Congress, statements by Senator Sterling July 8th, 1921, page 3456, Senator Walsh July 19, page 4035, Senator Willis July 19, page 4037, Senator Nelson July 19, page 4038, and speech of Mr. Volstead, August 16, p. 8746, relative to necessity for limitation and extended remarks, Aug. 23, p. 6055.

In the Appendix (page 37) there is set forth a table compiled from the annual reports of the Commissioner of Internal Revenue, showing the quantity of medicinal whiskey in proof gallons withdrawn annually from 1921 to 1925; also the number of permits issued annually for the corresponding period authorizing physicians to prescribe and retail druggists to fill prescriptions for medicinal liquor.

The drop in medicinal whiskey withdrawals from 8,671,860 proof gallons in 1921 to 2,654,506 proof gallons in 1922 was due in a large part to the improvement of the permit withdrawal system and the reduction in the number of forged permits to purchase and forged prescriptions. The low point was reached in

the year 1923 when the quantity was 1,754,893 proof gallons. There is a slight increase in withdrawals since, the total for 1925 being 1,923,537 proof gallons, with a substantial increase in the number of permits issued to prescribe and dispense. The number of physicians holding permits to prescribe increased from 36,859 in 1921 to 83,622 in 1925 and the number of retail druggists holding permits increased from 16,231 in 1921 to 19,866 in 1925. The closer check on all withdrawals that is now being maintained has reduced forgeries and frauds of like character. It is apparent that, with all restriction that can reasonably be placed around the medicinal whisky withdrawal system, that there is an upward curve in quantity withdrawn and in number of permittees involved.

Even with the limitations of existing law the American Medical Association at its meeting in Boston June 9, 1921, found it necessary to pass the resolution condemning the illegal prescribing of liquors. See Resolution set forth in the Appendix, p. 38.

The character of men seeking to enter the practice of pharmacy and conduct retail drug stores is a matter that is giving serious concern to leaders of pharmacy in the United States, and the situation is attributed largely to the fact that the retail drug store has the legal right to dispense liquor and narcotics upon prescription.

The Druggists Circular, one of the oldest and leading drug journals in the country, in its March, 1926, issue publishes the result of a Nation-wide referendum taken among the retail druggists of the country which shows that more than 80 per cent of the retail druggists favor petitioning Congress to relieve them of responsibility of dispensing liquor on prescription.

The New York State Pharmaceutical Association adopted a resolution at its annual convention in June, 1925, in which it declared that many of the current ills in pharmacy have resulted from the fact that the prohibition law designates retail pharmacists as the only legitimate distributors of medicinal liquor to the public and petitioned Congress to relieve pharmacy of that responsibility.

In October the proposal again came up for discussion, this time at the annual convention of New York (City) Pharmaceutical Conference and, somewhat modifying the introductory clauses, the pharmacists of the greater city expressed approval of the "New York proposal" and added their voices to the petition for amendment of the prohibition law. Since that time the Northern Ohio Retail Druggists' Association has "demanded that Congress take whiskey dispensing out of drug stores" and many pharmacists, through their local associations and individually, have expressed themselves in favor of amending the prohibition law so as to provide for the distribution of medicinal liquors.

THE NATIONAL PROHIBITION ACT IMPOSES NO RESTRICTIONS ON MEDICINAL INTOXICATING LIQUORS. ITS PROHIBITIONS APPLY ONLY TO SUCH LIQUORS ADMINISTERED IN BEVERAGE FORM.

It should be noted that where a physician wishes to prescribe more than one pint of spirituous liquor within a period of ten days, or to administer a quantity in excess of this amount, that in addition to the one pint of potable liquor permitted under Section 7, of the National Prohibition Act, such physician may pre-

scribe, or himself dispense, any quantity of spirituous liquor reasonably *medicated* so that it does not fall within the distinctly potable class. This might be readily availed of by those physicians who desire to prescribe liquors. The many who never prescribe liquor are not affected in the least.

This is succinctly stated by Judge Killetts in his opinion in the case of Price vs. Russell, 296 F. 263, 267, where he says:

> "It follows that there is no limitation upon either the prescription or administration of non-beverage intoxicating liquor. The pharmacopaeia and the National Formulary, which have statutory approval in section 4 of Title 2 of the act, as well as common experience instruct the physician in the compounding of a beverage intoxicating liquor with an ingredient, subject to his selection as innocuous in the specific case, which will deprive the result of palatability. Thus will his administration be taken beyond the scope of the law. We see nothing in the law which prevents resort to this expedient when alcoholic stimulant is indicated to the physician's judgment beyond the limitation of a half pint within ten days. This compounding may be done, as the profession knows, and it is also known to intelligent laymen, without deterioration of the expected thereapeutic effect of the administration, except in those rare and neglible cases where the palate is to be tickled as part of the treatment, and these Congress seems to have provided for in section 6, where medical attention to such appetites is legislatively considered.
>
> "We see no good reason, contemplating the course of decisions, justifying restrictive legislation that the exercise of this police power might be effective, some of which we have considered above, why Congress may not have legislated to prohibit the administration by physicians of beverage

liquors altogether, requiring the use of such medication, innocuous in the specific instances, as would render the prescription unpalatable. Congress, in our judgment and in the larger public interest, may burden the profession when the drug alcohol or a potable intoxicating liquor is indicated, with an obligation to make its administration directly. It is understood to be the drug effect of the alcohol in the medium employed which the phyisician seeks and not that which results from the beverage use, merely. It is not urged here that any other component of the intoxicating liquor sought to be administered is relied upon for its thereapeutic effect. What is complained of here, therefore, is not an improper limitation upon the exercise of professional obligation, but of a limitation of a mere privilege."

The case decided by Judge Ki. etts passed upon the specific question which is raised in the instant case. He sustained the validity of the restrictions in the law, declining to follow the earlier decisions by Judge Knox in the instant case, 291 F. 640, and Judge Bourquin in United States v. Freund, 290 F. 411. The reasoning of Judge Killetts upon the precise question involved in this case and the decisions of this court upon analogous questions in Hixson v. Oakes, 265 U. S. 264 and Everard's Breweries v. Day, 265 U. S. 554, are conclusive in favor of the Constitutionality of the statutes involved.

LEGISLATIVE ACTS ARE PRESUMED CONSTITUTIONAL. IN THE EXERCISE OF ITS POWER TO EFFECT A CONSTITUTIONAL PURPOSE CONGRESS IS THE JUDGE OF THE MEANS TO BE EMPLOYED AND THE NECESSITY WHICH OCCASIONS ITS EMPLOYMENT.

This Court in Everard's Breweries v. Day, 265 U. S. 554, said:

> "In enacting this legislation Congress has affirmed its validity. That determination must be given great weight; this court, by an unbroken line of decisions, having 'steadily adhered to the rule that every possible presumption is in favor of the validity of an act of Congress until overcome beyond rational doubt.' Adkins v. Children's Hospital, 261 U. S. 525, 544, 67 L. ed. 785, 790, 24 A. L. R. 1238, 43 Sup. Ct. Rep. 394."

The provisions of the Supplemental Prohibition Act which are challenged here are not simply a part of a general scheme of legislation enacted by Congress without due consideration. *The specific issue which Congress faced in the enactment of the Supplemental Prohibition Act was that of the necessity for providing regulations regarding th· prescribing of liquor* which had arisen by virtue of the Attorney General's decision. The Legislative body has acted. This Court has repeatedly reiterated the principle expressed in Hamilton v. Kentucky's Distilleries and Warehouse Company, 251 U. S. 146, where in construing the War prohibition it was held:

> "The Federal Supreme Court may not, in passing upon the validity of a Federal Statute, in-

quire into the motives of Congress, nor may it inquire into the wisdom of the legislation, nor may it pass upon the necessity for the exercise of a power possessed."

Before the Judicial Department will declare a statute unconstitutional it must appear that the statute is either arbitrary, unreasonable or has no real or substantial relation to making the Constitutional purpose effective. The difficulties always attendant upon the suppression of the liquor traffic are notorious. Crane v. Campbell, 245 U. S. 304, 307. The Federal government in enforcing prohibition is confronted with difficulties similar to those encountered by the states. Ruppert v. Caffey, 251 U. S. 264.

In view of experience and the evidence before the committee of Congress at the time the Act was passed, it can not be said that the statutes in question are either arbitrary, unreasonable or without relation to the purpose of making the prohibition upon the beverage use of intoxicants effective. The remedy of those who desire a change in existing regulation lies with the Legislative rather than the Judicial branch of the Government.

CONCLUSION

The points raised in this case have been settled by the decision of the U. S. Supreme Court. These decisions establishing—First that the evil sought to be prevented by the Eighteenth Amendment is the same as that which the States sought to suppress through the exercise of the police power. Ruppert v. Caffey, 251 U. S. 264, 297. U. S. v. Lanza, 260 U. S. 377, 381, 67 L. Ed. 314, 316.

Second—That the amendment conferred full power upon Congress to make prohibition effective and that the legislation enacted pursuant thereto may have the same characteristics as that enacted by the states under the police power. U. S. v. Lanza, Supra; Rhode Island vs. Palmer, 253 U. S. 350, 64 L. Ed. 946.

Third—That there is no right to practice medicine which is not subordinate to the police power. Hixson v. Oakes, 265 U. S. 264; Everard's Breweries v. Day, 265 U. S. 554; Gray v. State of Conn., 159 U. S. 74.

Fourth—That Congress is the judge of what constitutes appropriate legislation and that the judgment of the legislative body will not be interfered with unless it can be said to be plainly unreasonable, arbitrary, or without substantial relation to the purpose of the amendment. Everard's Breweries v. Day, 68 L. 81.

Fifth—That the Eighteenth Amendment conferred no new right to prescribe medicinal liquors. Hixson v. Oakes, 265 U. S. 264.

Sixth—That the states prior to the Eighteenth Amendment and Congress, in legislating for the territories, provided even more restictive legislation without violating any constitutional right. Everard's Breweries v. Day, 265 U. S. 554.

Seventh—That the judgment of the legislative body is entitled to respect. The 66th Congress which passed the original National Prohibition Act fixed the limitation upon spirituous liquors. The 67th Congress which passed the supplemental prohibition Act reiterated this judgment and extended the same limitation to vinous liquors. Everard's Breweries v. Day, 265 U. S. 554.

Eighth—That statutes are presumed to be constitutional, Everard's Breweries v. Day, 265 U. S. 554; Adkins v. Children's Hospital, 261 U. S. 525-544;

therefore, in view of the decisions of the Court, the experience of the states and of the Federal Government in the enforcement of prohibition, and the repeated judgment of Congress, expressed in legislation, the Courts cannot declare the limitations contained in the National Prohibition Act and Supplemental Prohibition Act to be in excess of the authority conferred by the Amendment.

It is, therefore, respectfully submitted that the judgment of the Circuit Court of Appeals, Second Circuit, in this case should be affirmed.

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EXHIBIT "A"

EIGHTEENTH AMENDMENT

"Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

"Sec. 2. The Congress and the several states shall have concurrent power to enforce this article by appropriate legislation."

Section 7, Title II of the National Prohibition Act provides:

"No one but a physician holding a permit to prescribe liquor shall issue any prescription for liquor. And no physician shall prescribe liquor unless after careful physical examination of the . .

person for whose use such prescription is sought, or if such examination is found impracticable, then upon the best information obtainable, he in good faith believes that the use of such liquor as a medicine by such person is necessary and will afford relief to him from some known ailment. Not more than a pint of spirituous liquor to be taken internally shall be prescribed for use by the same person within any period of ten days and no prescription shall be filled more than once. Any pharmacist filling a prescription shall at the time indorse upon it over his own signature the word 'cancelled,' together with the date when the liquor was delivered, and then make the same a part of the record that he is required to keep as herein provided.

"Every physician who issues a prescription for liquor shall keep a record, alphabetically arranged in a book prescribed by the commissioner, which shall show the date of issue, amount prescribed, to whom issued, the purpose or ailment for which it is to be used and directions for use, stating the amount and frequency of the dose."

Section 2 of the Supplemental Prohibition Act of November 23rd, 1921, in so far as pertinent provides:

"That only spirituous and vinous liquor may be prescribed for medicinal purposes, and all permits to prescribe and prescriptions for any other liquor shall be void. No physician shall prescribe, nor shall any person sell or furnish on any prescription, any vinous liquor that contains more than 24 per centum of alcohol by volume, nor shall anyone prescribe or sell or furnish on any prescription more than one-fourth of one gallon of vinous liquor, or any such vinous or spirituous liquor that contains separately or in the aggregate more than one-half pint of alcohol, for use by any person within any period of ten days. No phys-

ician shall be furnished with more than one hundred prescription blanks for use in any period of ninety days, nor shall any physician issue more than that number of prescriptions within any such period unless on application therefor he shall make it clearly apparent to the commissioner that for some extraordinarly reason a larger amount is necessary, whereupon the necessary additional blanks may be furnished him."

EXHIBIT "B"

ANNUAL WITHDRAWAL OF MEDICINAL WHISKEY IN PROOF GALLONS

1921	8,671,860
22	2,654,506
23	1,754,893
24	1,813,178
25	1,923,537

NO. OF PERMITS TO PRESCRIBE ANNUALLY ISSUED TO PHYSICIANS

1921	36,859
22	44,346
23	57,597
24	65,982
25	83,622

NO. OF PERMITS TO DISPENSE ON PRESCRIPTION ANNUALLY ISSUED TO RETAIL DRUGGISTS.

1921	16,231
22	18,498
23	17,359
24	19,643
25	19,866

EXHIBIT "C"

Resolution adopted by the American Medical Association at its meeting in Boston, June 9, 1921:

> "Whereas reproach has been brought upon the medical profession by some of its members who have misused the law which permits the prescribing of alcohol; therefore be it
>
> Resolved, That the American Medical Association now expresses its disapproval of the acceptance of the position by a small minority of the profession, of being purveyors of alcoholic beverages."